



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0217]

RIN 1625-AA00

Safety Zone; Fireworks Display, Sea Otter Point, Port of Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters from the surface to seabed, within a 150 yard radius of the fireworks launching point located at Sea Otter Point in position 61°07'22" North and 146°21'13" West in the vicinity of the mouth of the Small Boat Harbor, Port of Valdez, Alaska, to limit access for the duration of the New Year's fireworks display. The safety zone is needed to protect mariners and vessels from potential hazards during the fireworks display.

DATES: This rule is effective from 9:50 p.m. through 10:45 p.m. on December 31, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0217 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Christian R. Heming, Waterways Management Division, U.S. Coast Guard; 907-835-7229, email Christian.R.Heming@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Prince William Sound
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.”

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable and contrary to the public interest since immediate action is needed to minimize potential danger to the public during the event. Any delay in the effective date of this rule could prevent this community event from occurring or present a safety risk to people and vessels in the vicinity of the fireworks display. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the zone and on-scene Coast Guard assets will provide notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule could prevent this community event from occurring or present a safety risk to people and vessels in the vicinity of the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034

(previously 33 U.S.C. 1231). The Captain of the Port Prince William Sound (COTP) has determined that potential hazards associated with the New Year's fireworks display will be a safety concern for anyone within a 150-yard radius of the fireworks launch site at Sea Otter Point. The safety zone is necessary to provide notice of the hazards presented by the fireworks display in order to achieve the goal of enhancing the safety of people and vessels attending the event in the navigable waters in the vicinity of the fireworks launching site

IV. Discussion of the Rule

This rule establishes a safety zone from 9:50 p.m. through 10:45 p.m. on December 31, 2022. The safety zone will cover all navigable waters within 150 yards of the locations where the fireworks will be launched at Sea Otter Point. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and

time-of-day of the safety zone. The safety zone would impact a small designated area of Port Valdez for a duration less than 1 hour. Vessel traffic is rare and normally low for this time of year at the Port of Valdez. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on

actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately one hour that will prohibit entry within 150 yards of the launching site at Sea Otter Point, located near the entrance of the Small Boat Harbor in Port of Valdez, AK. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T17-0217 to read as follows:

§ 165.T17-0217 Safety Zone; Fireworks Display, Sea Otter Point, Port of Valdez, AK.

(a) Location. The following area is a safety zone: All navigable waters, from the surface to the seabed, of Port Valdez within a 150-yard radius from a position of 61°07'22" N and 146°21'13" W. This includes the entrance to the Port Valdez small boat harbor.

(b) Definitions. The following definition applies to this section: "Designated representative" means any commissioned, warrant, and petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port Prince William Sound.

(c) Regulations. (1) Under the general regulations contained in subpart C of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Prince William Sound or his designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the Coast Guard Captain of the Port Prince William Sound or his designated representative.

(3) Upon being hailed by a U.S. Coast Guard vessel or designated representative by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(4) Persons desiring to enter the safety zone may request permission from the Captain of the Port Prince William Sound via VHF Channel 13 or via telephone at (907) 835-7205.

(5) The Coast Guard will issue a broadcast notice to mariners to advise mariners of the temporary safety zone and on-scene Coast Guard representatives will provide notice to mariners during the event.

(d) Enforcement period. This rule will be enforced from 9:50 p.m. to 10:45 p.m. on December 31, 2022.

Dated: December 12, 2022.

P. A. Drayer,

Commander, U.S. Coast Guard,
Captain of the Port Prince William Sound.

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